

determine what effect that increase in the level prices for telephone service will have on subscribership. Based on the study relied upon by the FCC in rendering its original decision in Docket No. 78-72, an increase of the magnitude necessary to eliminate the common line charge, could drive a significant number of Americans from the telephone network.³¹

We believe that the Commission should be wary of assuming that the affects of a substantial increase in the subscriber line charge can be sufficiently ameliorated by universal service mechanisms such as targeted subsidies. Although explicit universal service support mechanisms may help preserve universal telephone service in very high cost areas, an increased end user charge could permit significant increases in base entry level prices for service in some areas which have not been modeled and are not known at this time.

Similarly, lifeline mechanisms may be inadequate because once end-user charges are increased, an unknown but significant number of customers may be unable to afford the basic quality telephone service they enjoy today.

If the Commission is not inclined to shift the SLC from an end user charge to a charge paid by interexchange carriers, at the very least it should consider adjusting the SLC over time. Traffic sensitive access rates are currently capped and are subject to a productivity adjustment. With improvement of line concentration technology and build-out of Subscriber Line Carriers, there is no question that subscriber line costs are experiencing productivity improvements along with other cost of the public switched network. Consumers will not reap those productivity gains if a productivity adjustment is not applied to the SLC. Further, because the cost of subscriber line equipment is

³¹ See *Third Report and Order*, Appendix G, Table 3; The "Pearl I" study shows an approximate nine (9) percent drop-off rate with the proposed \$6.00 end user plan. This study was submitted by AT&T as an exhibit in the Divestiture proceeding, "Pearl II" has been developed as a retreat from the Pearl I conclusions.

decreasing in both real and nominal terms, any increase of the SLC would be inconsistent with the trend of costs to carriers.

Administration of Support Mechanisms

Paragraphs 121 through 126 of the NPRM seek comment on how contributions to federal Universal Service mechanisms should be assessed. The statutory goals of equitable and nondiscriminatory contributions³² and specific and predictable support mechanisms³³ can best and most equitably be met by spreading the funding burden across all services provided by any and all interstate providers in equal proportion to revenue.

Paragraph 123 of the NPRM suggests collecting contributions on net revenues, after subtracting revenues paid to other carriers. This amounts to an exclusion of wholesale transactions between carriers. The Commission should strive to avoid charging the same service twice, and this wholesale exemption should accomplish that purpose. This will ensure that the system is neutral as between carriers who purchase services at wholesale and those vertically integrated carriers who purchase relatively few components from others.³⁴

Paragraphs 127 through 131 of the NPRM seek comment on fund administration. One option under consideration is appointment of a neutral fund administrator. Vermont has had a neutral fund administrator since 1994 for its Universal Service Fund. That administrator was selected for a three year contract from among seven competitors who submitted formal bids. Criteria

³² 1996 Act, Sec. 101(a), § 254(b)4.

³³ 1996 Act, Sec. 101(a), § 254(b)5.

³⁴ The Vermont Universal Service Fund has been operating successfully since October, 1994, using similar principles, although in Vermont the charge is assessed on the customer purchase, rather than on the carrier's revenue.

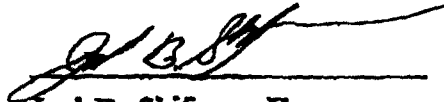
for selection included cost, ability to handle deposits and payments, ability to invest securely, and knowledge of the telecommunications industry. Telecommunications carriers were disqualified from bidding. Vermont also gave preference to bidders who offered the continuity of an existing institution, as opposed to individual bidders. The Vermont system, as administered by NECA, has been working well, and may be an adequate administrative model for a federal program.

Schools and Libraries

The Maine Public Utilities Commission recently completed a ratemaking proceeding in which it required NYNEX to provide discounted and/or free service to schools and libraries in Maine. Attached to these comments are the portion of the Maine Commission's Orders and press releases. These may be useful in providing guidance to the Joint Board.

Respectfully submitted,

for the
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April 10, 1996

page Signature-2 of 8

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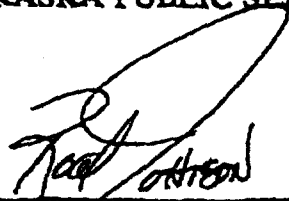
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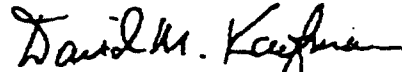
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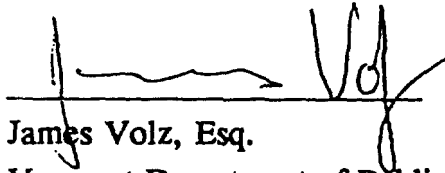
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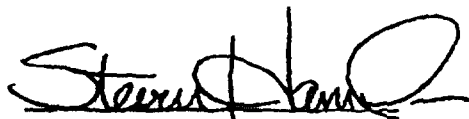
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FCC NPRM Docket 96-45
April 10, 1996

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Certificate of Service

I, Peter M. Bluhm, hereby certify that on this 11th day of April, 1996, copies of the foregoing comments of:

the state of Maine Public Utilities Commission,
the state of Montana Public Service Commission,
the state of Nebraska Public Service Commission,
the state of New Hampshire Public Utilities Commission,
the state of New Mexico State Corporation Commission,
the state of Utah Public Service Commission,
the state of Vermont Department of Public Service and
Public Service Board, and

the Public Service Commission of West Virginia
were served by first class mail, postage prepaid, to the parties listed on the attached service list.



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**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC 96-93

In the Matter of)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)

COMMENTS OF:

**THE STATE OF MAINE PUBLIC UTILITIES COMMISSION,
THE STATE OF MONTANA PUBLIC SERVICE COMMISSION,
THE STATE OF NEBRASKA PUBLIC SERVICE COMMISSION,
THE STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION,
THE STATE OF NEW MEXICO STATE CORPORATION COMMISSION,
THE STATE OF UTAH PUBLIC SERVICE COMMISSION,
THE STATE OF VERMONT DEPARTMENT OF PUBLIC SERVICE AND
PUBLIC SERVICE BOARD, AND
THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

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SUMMARY

The Telecommunications Act of 1996 imposes an extraordinary burden on the Commission, to ensure that rates are reasonably comparable between rural, insular and high cost areas on the one hand and urban areas on the other. This statutory goal will not be met if the Commission fails to establish a high cost funding mechanism that is adequately funded. That system must also be targeted accurately to high cost areas. It should be based on reported costs of carriers, not on rates, since rates are extremely difficult to compare accurately and proxy models are not yet sufficiently mature to serve as a basis for distributing funds. In distributing funds, the Commission should avoid using any criteria that do not drive cost, such as the size of a company or the size of its study area. Although local rate measurement is necessarily too inexact to serve as a basis for fund distributions, the Commission should nevertheless seek data on rates and develop a mechanism for comparing rates.

State universal service programs are authorized under the 1996 Act, but the federal program should be sufficient to permit states to support supplemental programs and services. In establishing a definition of services supported by universal service funds, the Commission should balance the desire to support advanced services against any size limits it perceives for the funding system.

If the Commission desires to increase the subscriber line charge, it should do so only if it transfers responsibility for paying that charge from customers, who now perceive it as a local service charge, to interexchange carriers, who use the local loop as a part of their business. This interpretation will restore the separations principles established by the United States Supreme Court in *Smith v. Illinois Bell Telephone Company*.

The Commission should finance universal service programs by fairly collecting revenues from all service providers. "Net revenue" should be the preferred method to raise revenue because it is competitively neutral. Finally, Vermont's experience with a neutral administrator suggests that model could work at the federal level.

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COMMENTS

The Commenting States

The Commenting States are statutorily responsible for establishing just and reasonable rates, charges and practices for public utilities within their jurisdictions. They therefore are "State commission(s)" within the meaning of the Telecommunications Act of 1996.¹ The eight Commenting States are Maine, Montana, Nebraska, New Hampshire, New Mexico, Utah, Vermont, and West Virginia. They hereby submit their comments on the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board.

Rural, Insular and High Cost Areas - The Statutory Standard

Section 254(b) prescribes seven principles for guidance in designing policies for the preservation and advancement of universal service. Principle (3), states, in part, that:

Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (emphasis added).

This principle must be acknowledged when determining the overall level and structure of universal service assistance.

These seven principles provide much more detailed guidance to the Commission on the goals for universal service than was available under the 1934 Act.

¹ E.g. 1996 Act, Sec. 101(a), §§ 251(e), 252(b).

Adequacy of Assistance to Rural, Insular and High Cost Areas

Universal service funding provided by the Commission to support high cost areas must be adequate to meet the new and ambitious statutory objectives found in the 1996 Act.² If the new system does not distribute sufficient funds to the state based upon a nondiscriminatory cost analysis, then "reasonably comparable" rates will simply not be possible, no matter how well designed the mechanisms to distribute assistance. Whatever mechanism the Commission selects to distribute assistance, it must provide adequate funding as well.

Adequate funding may require significantly greater federal assistance than existing programs.³ At present, there is little or no difference between rural and urban rates in many study areas. This condition is not due to federal efforts, but exists because states have established rate designs that impose average rates on both high cost and low cost areas. These rate designs amount to implicit transfers by the states, and have the effect of supporting universal service. As competition matures across the country, states will find increasing difficulty in maintaining average rates. To the extent that states permit de-averaging of rates, the transfers that are now implicit in existing rate

² Act of 1996, Sec. 101(a), §254(b)(3). The NPRM suggests that the Commission is aware of this increase in scope of the program. NPRM, paragraph 14, footnote 39. Previously, assistance to high cost areas was intended to "ensure that telephone rates are within the means of the average subscriber in all areas of the country." *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 96 FCC2d 781, 795 (1984).

³ One way to estimate the scale of the problem is to estimate the additional revenue needed to eliminate the dichotomy between large and small companies under the existing mechanism. If all local exchange carriers had been given assistance under the "small company" formula in 1994, the cost of the fund would have been approximately \$1.33 billion, rather than the \$0.77 billion actually distributed. If the Commission should also decide to merge the high cost fund with the DEM weighting program, the net cost increase might be smaller, since in many cases the carriers that receive significant DEM benefits do not have high loop costs.

designs must be converted into explicit transfers under the direction of the Commission's universal service mechanisms.

Increased funding may conflict with the historical desire of the Commission to limit the growth of its existing High Cost Fund.⁴ However, these concerns were expressed before the 1996 Law was enacted. Since the 1996 Act gives the Commission new ways to raise universal service monies,⁵ the Commission's concern may have been lessened.

The 1996 Act authorizes state universal service programs,⁶ but it also delegates to the Commission the principal responsibility to ensure that national universal service objectives, including reasonably comparable rates between urban and rural areas, are met. Nothing in the law suggests that the federal responsibility to ensure that rates are "reasonably comparable" is conditional upon state participation, nor upon a state paying a "share" of the cost. Thus the Commission must design universal service mechanisms, based upon federal funding, that will be capable of avoiding non-comparable rates in rural, insular and high costs areas. The Commission should not suppose that State funds will be required in order to achieve this basic purpose.

As the Commission undertakes to design a new system, it will face the prospect of a much larger program than in the past. Yet it must resist the temptation to set an arbitrary upper limit on the funding that will be needed to achieve the statutory purpose. Certainly any high cost assistance

⁴ For example, in Docket 80-286, *In re Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, the Commission issued a Notice of Proposed Rulemaking and Notice of Inquiry, FCC 95-282, released July 13, 1995. That notice proposed several measures to limit expenditures under the existing high cost assistance program, including establishing a "cap" on the size of the fund. ¶¶ 47-50.

⁵ The Commission is considering, for example, carrier contributions as a percentage of revenues, net of payments to other carriers. NPRM, paragraph 123. A similar proportional charge, net of wholesale transactions, has been successfully used to support Vermont's Universal Service Fund, thereby replacing a per-access line charge.

⁶ 1996 Act, Sec. 101(a), §254(f).